No. 18-489

# In the Supreme Court of the United States

BRADLEY WESTON TAGGART,

*Petitioner,*

v.

SHELLEY A. LORENZEN, *et al.*,

*Respondents.*

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF FOR THE STATES OF CALIFORNIA, ALASKA, COLORADO, CONNECTICUT, FLORIDA, HAWAI'I, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEBRASKA, NORTH DAKOTA, OHIO, OREGON, PENNSYLVANIA, SOUTH DAKOTA, TENNESSEE, UTAH, VERMONT, VIRGINIA, WASHINGTON, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF RESPONDENTS**


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## QUESTION PRESENTED

Whether, under the Bankruptcy Code, a creditor's good-faith belief that the discharge injunction does not apply precludes a finding of civil contempt.

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## INTERESTS OF AMICI STATES

States routinely interact with large numbers of individuals and businesses in carrying out their taxing and regulatory responsibilities. For example, States enforce injunctive orders, and they collect overdue permit and license fees, costs for clean up of contaminated sites, and income, sales, use, and property taxes from a wide variety of entities. Tax collection in particular is the "lifeblood of government[.]" *Bull v. United States*, 295 U.S. 247, 259 (1935).

The amici States have a significant interest in protecting their sovereign power to regulate and tax, consistent with legitimate constraints imposed by the Bankruptcy Code. Consistent with their strong interest in consumer protection, the States respect the important public purposes served by a bankruptcy discharge, which functions as an injunction against actions to collect debts within the scope of the discharge and thus provides debtors with a fresh start. At the same time, not all obligations are debts, and not all debts are discharged in bankruptcy. Debts expressly excepted from discharge include many tax obligations, a type of debt that is uniquely owed to governments. And in many cases, legal and factual complexities can lead to reasonable differences of opinion about whether a discharge applies to specific debts, or whether a particular obligation is even a debt at all.

It is of substantial importance to the States that bankruptcy courts apply the correct standard in determining whether a creditor's actions are subject to civil contempt sanctions for violation of a discharge. The standard should account for the interests of both debtors and creditors as reflected in the Bankruptcy Code. It should not chill or penalize States' reasonable post-

discharge regulatory and collection efforts, or effectively expand discharge protections beyond what the Code provides.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Whether a bankruptcy discharge applies to a particular obligation is not always clear. Among other things, the effect of certain statutory exceptions from discharge may depend on the application of complex law to disputed facts. Further, it may be unclear whether an obligation constitutes a claim relating to a debt under the Bankruptcy Code and, if so, whether the timing of that claim brings it within the scope of the discharge. Other circumstances, such as the effect of state community property laws, may further complicate matters.

The challenges facing creditors seeking to interpret and apply a discharge are particularly acute for States, whose taxing and regulatory responsibilities intersect with thousands of bankruptcies each year.[1] While States undertake reasonable efforts to comply with the terms of bankruptcy discharges, in many cases reasonable minds may differ about whether an obligation, including a debt, has been discharged. In some number of cases, reviewing courts will eventually hold that States have attempted to collect discharged debts.

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[1] For ease of reference, the States in this brief use "creditor" broadly to include state regulatory agencies holding obligations that are not traditional claims for monies owed, such as those relating to cleanup of contaminated sites. In some instances, such obligations may be debts that may be discharged in bankruptcy. *See* discussion at p. 11, *infra*.

If, as petitioner argues, a strict liability standard applies to violation of bankruptcy discharges, the prospect of significant sanctions, including attorneys' fees, will unduly chill creditors in their efforts to collect debts and take other actions that Congress did not intend to be affected by a discharge. This result would be particularly troubling for States, impairing the exercise of core sovereign prerogatives related to matters such as tax collection and environmental protection.

Petitioner's proposed solution—requiring creditors to file actions in bankruptcy court seeking an advance determination of whether a specific obligation, has been discharged—is infeasible, particularly for States, and would cause States to write-off debts that, while not discharged, would not be cost-effective to collect given that additional expense. That result is not required by, or even consistent with, the Bankruptcy Code.

In contrast, a standard that protects creditors from contempt sanctions where their actions are *objectively reasonable* comports with the text and structure of the Code. Among other things, a standard of objective reasonableness: is consistent with Congress's decision to make only a few of the many exceptions from discharge subject to an express advance-determination requirement; respects the right of creditors to seek a determination with respect to discharge in state court, as part of state collection or enforcement actions; and is consistent with traditional civil contempt standards, as applied to technical court orders involving complicated law and facts. The objective reasonableness standard presents no obstacle to sanctioning predatory debt collection practices, or limits to liability for such practices. Such a standard properly protects both debtors' and creditors' interests under the Code.

In this case, respondents' view that attorneys' fees incurred post-bankruptcy were not discharged was objectively reasonable. Accordingly, the judgment below should be affirmed.

## ARGUMENT

### I. WHETHER AN OBLIGATION HAS BEEN DISCHARGED IS OFTEN UNCLEAR AND SUBJECT TO REASONABLE DISPUTE— PARTICULARLY FOR THE TYPES OF OBLIGATIONS OWED TO THE GOVERNMENT

Petitioner emphasizes the automatic, injunctive effect of a bankruptcy discharge—noting that it serves as a total prohibition on the collection of discharged debts and provides the debtor with a "fresh start." Pet. Br. 4; *see* 11 U.S.C. § 524(a)(2). But a discharge has that effect only for debts that are within its scope. By congressional design, not all obligations are debts, and not all debts are subject to discharge.

The language of a typical, summary discharge order is generally of little assistance in determining whether it prohibits collection of a particular debt. The two-page form Chapter 7 discharge order contains an "Explanation of Bankruptcy Discharge" that provides at the most general level that: "[c]reditors cannot collect discharged debts"; "[m]ost debts are discharged"; but "[s]ome debts are not discharged," including "debts for most taxes," "debts for most fines, penalties, forfeitures, or criminal restitution obligations," "debts that are domestic support obligations," "debts for most student loans," and "some debts which

the debtors did not properly list."[2] The form further states that "[t]his is only a general summary of the bankruptcy discharge . . . ."

Creditors seeking to determine whether a particular obligation has been discharged must interpret the applicable bankruptcy provisions and apply the law to the relevant facts. Section 523 of the Code sets out 19 exceptions from discharge, some of which are complex and conditional, and all but three of which are self-effectuating. 11 U.S.C. § 523(a)(1)-(19). Congress provided a number of discharge exceptions that apply to matters of critical, and in some cases unique, importance to government entities, including the States. These include taxes (§ 523(a)(1)); penalties (§ 523(a)(7), (a)(14A)); restitution (§ 523(a)(13), (a)(19)(B)(iii)); other sanctions imposed in criminal proceedings (§ 523(a)(4), (a)(7), (a)(13)); domestic support obligations (which may sometimes be owed to a government agency) (§ 523(a)(5)); and penalties imposed for violations of securities laws (§ 523(a)(19)(A)(i)). If an exception does not apply, a creditor must then evaluate whether the relief it seeks constitutes a "claim" under the Bankruptcy Code, and, if so, whether that claim "arose" before bankruptcy and therefore is discharged, or instead after bankruptcy, in which case the claim remains due. *Ohio v. Kovacs*, 469 U.S. 274, 278 (1985); 11 U.S.C. § 727(b).

State law may add an additional layer of legal complication. Community property law, for example, can create unpredictability about the scope of discharge

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[2] Official Form 318, Order of Discharge, https://www.uscourts.gov/sites/default/files/form_b318_0.pdf.

orders, because creditors (including States) are authorized to pursue the separate property of a debtor's non-filing spouse. *See* 11 U.S.C. § 541(a)(2) (bankruptcy estate includes non-filing spouse's interest in community property, subject to additional conditions). Distinguishing between community property and separate property depends on complex standards set by state law as applied to particular factual circumstances. *See, e.g., In re Marriage of Rossin*, 91 Cal. Rptr. 3d 427, 431, 433 (Cal. Ct. App. 2009) (discussing various factors relevant to property characterization under California community property law and varying standards of appellate review); *see also In re Schmiedel*, 236 B.R. 393, 400 (E.D. Wis. 1999) (declining to award sanctions for creditor's alleged violation of discharge because "the complexities of the interplay between community property rules, state judgment lien statutes and bankruptcy law make [creditors'] hesitancy to release their rights understandable").

Disputes over the scope of discharge orders, including whether one of the exceptions applies, are thus often complex, and their ultimate resolution by the courts can be difficult to predict.[3] The challenges these circumstances present for those seeking to comply with discharge orders (and avoid contempt) are

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[3] In this case, for example, two different judges (a state court judge and the bankruptcy judge, an expert in this field) determined that the creditors had not violated the terms of the debtor's discharge because the debtor had "returned to the fray." Pet. App. 6a-8a. According to petitioner, the creditors should nonetheless be held in contempt and liable for well over $100,000 because the reviewing court ultimately disagreed. Pet. Br. 6 n.1, 7.

magnified for States, given the large number of bankruptcy filings and the volume and diversity of States' potential claims. In recent years, the number of new bankruptcy petitions filed across the country has ranged from nearly 800,000 to over 1.5 million.[4] States and their agencies must assess their interests, if any, in each of these cases (assuming they receive notice). A larger State, for example, may have unpaid tax claims in tens of thousands of bankruptcy cases per year, making it infeasible to engage in detailed fact-finding and investigation.[5] Smaller States face proportionally similar challenges. And the amount of debt at issue is substantial: In 2017, individual debtors reported approximately $10 billion in non-dischargeable debt, or just under 10 percent of their total liabilities.[6] (As these figures are debtor-reported, the true amount of non-dischargeable debt may be even higher.)

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[4] United States Courts, *Bankruptcy Cases Commenced, Terminated and Pending* (period ending Dec. 31, 2018), https://www.uscourts.gov/sites/default/files/data_tbles/bf_f_1231.2018.pdf; (period ending Dec. 31, 2010), https://www.uscourts.gov/sites/default/files/statistics_import_dir/1210_f.pdf.

[5] More than 68,000 bankruptcy cases were filed in California alone during 2018, and California state taxing authorities would have had claims in a significant percentage of those cases. *See* United States Courts, *Bankruptcy Cases Commenced, Terminated and Pending* (period ending Dec. 31, 2018), https://www.uscourts.gov/sites/default/files/data_tbles/bf_f_1231.2018.pdf.

[6] United States Courts, *Table BAPCPA 1X – Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA)* (period ending Dec. 31, 2017), https://www.uscourts.gov/sites/default/files/data_tables/bapcpa_1x_1231.2017.pdf (subtracting total liabilities from total Net Scheduled Debt).

As the examples below illustrate, States and state agencies often face significant challenges in determining whether obligations to governments fall within the scope of a discharge.

State taxing authorities regularly rely on several discharge exceptions that exclude certain state taxes and fees from discharge, thereby protecting the public fisc. *See* 11 U.S.C. § 523(a)(1). Some of the exceptions might appear to be relatively clear, such as the exception for income or excise taxes for which the debtor was required to file a return in the three years prior to the bankruptcy. 11 U.S.C. § 507(a)(8)(A), (E); *id.* § 523(a)(1)(A). But factual and legal disputes can and do occur even in this context. For example, state agencies must often determine whether an amount owed by a debtor is a tax that is nondischargeable, or instead a fee that is subject to discharge. *See, e.g., In re Camilli*, 94 F.3d 1330, 1331-1332 (9th Cir. 1996) (distinguishing between nondischargeable "excise taxes" and dischargeable "fees"). Additionally, state agencies must determine whether and for how long the three-year "look-back" period is tolled because of a bankruptcy stay. *See, e.g., In re Jones*, 657 F.3d 921, 923-924 (9th Cir. 2011); *Young v. United States*, 535 U.S. 43, 46 (2002).

Other tax-related discharge exceptions are also far from straightforward. One example is the exception from discharge for tax liabilities "with respect to which a return, or equivalent report or notice . . . was not filed or given." 11 U.S.C. § 523(a)(1)(B). In general, under state laws, an individual debtor need not file a personal tax return unless he or she receives a certain

minimum amount of income.[7] When no return is filed, States must make estimates about income earned and taxes due (if any) using the best information available, such as any forms submitted to the State showing payments to the debtor. *See, e.g., In re Hayes*, 2009 WL 8466788, at *1 (B.A.P. 1st Cir. Aug. 3, 2009) (State resorted to bank statements to determine whether debtor had a filing requirement where debtor failed to file returns); *In re Ehrig*, 308 B.R. 542, 550 (Bankr. N.D. Okla. 2004) (IRS had to "devote[] resources to gathering income information and filing a substitute for a return" where debtor had failed to file his own return).

Under a strict liability standard, application of this exception would regularly present a significant risk for States because, by definition, the exception operates where a State has imperfect information. While a state agency may believe, based on the available information, that the debtor had an income tax filing requirement, it may turn out that the debtor did not. *See, e.g. In re Hayes*, 2009 WL 8466788, at *1 (factual dispute over whether debtor had sufficient income to trigger filing requirement); *cf. In re Kuhar*, 391 B.R. 733, 736 (Bankr. E.D. Pa. 2008) (dispute over whether case should be dismissed as a result of debtor's failure to file return, where debtor contended she had no filing requirement). Questions also arise often as to what constitutes a "return" for purposes of § 523(a)(1)(B). *See, e.g., In re Martin*, 542 B.R. 479, 483-491 (B.A.P. 9th Cir. 2015).

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[7] *See, e.g.*, Cal. Franchise Tax Board, *Do I Need to File?*, https://www.ftb.ca.gov/individuals/fileRtn/index.shtml?WT.mc_id=Forms_Sidebar_Completing_Requirement.

Another challenging exception applies to taxes "with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax." 11 U.S.C. § 523(a)(1)(C). The facts that the States rely on to demonstrate fraud will routinely be disputed, and it is impossible for a State to predict with certainty how a reviewing court will ultimately view the evidence. *See, e.g., United States v. Stanley*, 595 F. App'x 314, 318-319 (5th Cir. 2014) (whether debtor possesses "the requisite mental state" under § 523(a)(1)(C) requires an analysis of "the totality of the circumstances," which can include a detailed investigation of debtor's financial history); *Hawkins v. Franchise Tax Bd. of California*, 769 F.3d 662, 668-669 (9th Cir. 2014) (§ 523(a)(1)(C) requires specific intent to commit fraud).

Similar interpretive challenges affect a wide variety of other state agencies holding debts that may fall under an exception—such as child support obligations (§ 523(a)(5)), criminal restitution (§ 523(a)(13), (a)(19)(B)(iii)), penalties for violation of federal securities laws (§ 523(a)(19)(A)(i)), and penalties imposed for abuse of other persons (§ 523(a)(4), (a)(7), (a)(13), (a)(14A)).[8] And disputes over whether these exceptions apply frequently lead to litigation. *See, e.g., Indiana v. Brown (In re Brown)*, Adv. No. 17-3016

[8] Many state agencies—particularly those involved in taxation—have sophisticated procedures in place to analyze whether discharge exceptions apply, and to stop collections on liabilities that have been discharged. *See, e.g.*, Cal. Dep't of Tax & Fee Admin., Compliance Policy & Proc. Manual § 740.150, https://www.cdtfa.ca.gov/taxes-and-fees/manuals/cpm-07.pdf; Cal. Dep't of Tax & Fee Admin., Bankruptcy – Frequently Asked Questions (FAQs), https://www.cdtfa.ca.gov/legal/bankruptcy-faq.htm.

(Bankr. N.D. Ind. 2017) (dispute regarding whether penalty imposed for improperly receiving unemployment benefits is dischargeable).

Even determining whether an obligation owed to a government is a bankruptcy "claim," when that claim arose, and thus whether the claim is within the scope of a discharge can be difficult. 11 U.S.C. § 101(5) (defining "claim"); *cf. Ind. Family & Soc. Serv. Admin. v. Saint Catherine Hosp. of Ind., LLC*, (*In re Saint Catherine Hosp. of Ind., LLC*), 800 F.3d 312, 316-318 (7th Cir. 2015) (dispute over date on which State's claim relating to fee imposed on hospital arose). Determining claim status may be particularly complex in cases involving contaminated sites and environmental cleanup. *See, e.g., In re Chateaugay Corp.*, 944 F.2d 997 (2d Cir. 1991) (order seeking to remedy ongoing pollution not a claim). And questions about the relevant date of a claim are especially common in the environmental arena. *See, e.g., In re Jensen*, 995 F.2d 925 (9th Cir. 1993) (per curiam).[9] In many situations, a state environmental regulatory agency may be aware of potential contamination, and may have begun investigation and cleanup, making a precise determination of when the State's claim arose difficult. *See, e.g., id.* (explaining the variety of approaches used to discern when a claim for environmental response costs arose). Courts have declined to draw bright

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[9] *See also, e.g., In re Browne*, 358 B.R. 139, 145 (Bankr. D. N.J. 2006) (declining to impose sanctions on motor vehicle agency for attempting to collect DUI surcharges for prepetition violations where agency relied on "ample precedent stating that the date of conviction was relevant to determining whether a claim arose prepetition and, thus, was discharged").

lines, and have described the intersection of environmental laws and the Bankruptcy Code as "somewhat messy," making "conflict and confusion . . . almost inevitable." *Id.* at 927-928. To further complicate matters, the test for determining whether a state environmental claim exists and when it arose varies among the circuits. *See, e.g., In re Hassanally*, 208 B.R. 46, 51 (B.A.P. 9th Cir. 1997) (discussing different tests applied in various jurisdictions).

Reasonable minds can and often do disagree on whether a particular obligation is a debt that has been discharged in bankruptcy. In those cases, no amount of due diligence can preclude the possibility that a court may later disagree with a State's reasonable and informed determination. Where a court does find a creditor's action to be in violation of a discharge, it always has the power to require compliance going forward, and to prevent collection of the debt. The question in this case is whether and in what circumstances the creditor can be held in contempt and subjected to sanctions.

## II. A Strict Liability Standard Would Improperly Chill the Use of State Taxing and Police Powers and Finds No Support in the Bankruptcy Code

Holding creditors strictly liable for violating discharge orders, as petitioner advocates (*see* Pet. Br. 11, 15-16), would improperly interfere with States' core sovereign prerogatives to tax and regulate.

Under a strict liability regime, even where a State had a reasonable and well-supported position that an obligation was not discharged, the State would be sub-

ject to automatic sanctions for its actions if a court ultimately held to the contrary. Sanctions to compensate for attorneys' fees can range into the hundreds of thousands of dollars per case—as petitioner seeks here. Even a successful defense of a State's discharge determination can cost States a substantial amount in litigation costs and expenses. Under a strict liability rule, States would likely often find that the economic costs and risks of pursuing taxes and other legitimate debts, believed in good faith and with sound basis to be nondischarged, would greatly exceed the potential benefits. The precise cost of a strict-liability rule is difficult to estimate, but such a rule could certainly result in States writing off, in the aggregate, a substantial amount in obligations to the public fisc that Congress intended would remain collectable even after a bankruptcy discharge. *See generally* 11 U.S.C. § 523.

A strict liability standard would also chill enforcement by state environmental protection agencies. Where the status of an environmental obligation may be subject to dispute, and the State has knowledge of a discharge order involving a potentially responsible party, the issuance of a simple letter detailing that party's potential liability for environmental cleanup could trigger sanctions. The mere threat of a contempt action can be a serious deterrent to a state environmental agency, as any such action would divert its staff and resources away from its core mission.[10] *See,*

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[10] The California Department of Toxic Substances Control, for example, is responsible for assessing fees on entities that generate, store, transport, or dispose of hazardous waste, and is responsible for overseeing investigation and cleanup at hundreds of different

*e.g.*, *Brewer v. Ind. Dep't of Natural Res. (In Re Brewer)*, Adv. No. 19-01070-MER (Bankr. D. Colo. 2019) (owner of oil wells arguing that bankruptcy discharge invalidated entire settlement agreement with the Indiana Department of Revenue, including non-monetary obligations, such as agreement's requirement to plug wells). A strict liability rule would make it more expensive and risky for States to pursue non-discharged environmental cleanup obligations under federal and state environmental laws, and would result in polluters avoiding their fair share of the cleanup costs at these sites. This is not what Congress intended in enacting the Bankruptcy Code. *See Jensen*, 995 F.2d at 928 (observing that objectives of environmental cleanup laws and bankruptcy laws should be reconciled if possible); *see also In re Damm*, 2001 WL 34065016, at *3-4 (Bankr. C.D. Ill. (2001) (fines sought by state environmental agency are excepted from discharge not to deprive debtor of fresh start, but to "punish him for engaging in quasi-criminal conduct, to uphold the dignity and authority of the court, and to deter others from engaging in similar conduct").

A strict liability approach to contempt would also encourage debtors' attorneys to seek sanctions in a greater number of cases, even where a State's view that an obligation is not discharged is objectively rea-

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sites. The Department's Brownfields Cleanup Program "oversees restoration of approximately 1,700 sites in California that are in different stages of investigation and cleanup. There are 98 sites in California on the federal National Priorities List (NPL), under the Superfund program." Cal. Dep't of Toxic Substances Control, *2016 Programs and Accomplishments Report*, p. 9 (2017), https://www.dtsc.ca.gov/InformationResources/upload/DTSC-2016-Accomplishments-Report.pdf.

sonable. Such a rule could encourage potentially responsible parties and their counsel to adopt sharp litigation tactics rather than working with government authorities to correct a problem. *See, e.g., In re Beback*, 2013 WL 5156706, at *3 (Bankr. M.D. Fla. Sept. 12, 2013) (refusing to award fees for violation of discharge order where doing so would encourage motions brought for sole purpose of obtaining fees); *In re Robinson*, 228 B.R. 75, 85 (Bankr. E.D.N.Y. 1998) (reducing fees awarded for violation of the automatic stay under § 362(h) for same reason).

Petitioner argues that any party holding an obligation that might be covered by discharge should first seek an advance determination on that issue from the bankruptcy court, rather than simply proceeding with collection or, where court intervention is necessary, directly filing an enforcement action in the normal forum. Pet. Br. 11. But that proposal would impose substantial costs and burdens—particularly on States, whose taxing and regulatory responsibilities intersect with a large volume of bankruptcies.[11] To obtain a pre-collection ruling addressing discharge from the bankruptcy court, a creditor must file an adversary proceeding in the bankruptcy case, which is essentially a new lawsuit, and pay a $350 filing fee. Fed. R. Bankr. P. 7001(6), 7007.[12] States filing such actions would be subject to discovery and associated costs.

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[11] The proposal would, of course, substantially burden the bankruptcy courts with matters that are not currently litigated, or are litigated elsewhere, consistent with the Bankruptcy Code.

[12] United States Courts, *Bankruptcy Court Miscellaneous Fee Schedule*, https://www.uscourts.gov/services-forms/fees/bankruptcy-court-miscellaneous-fee-schedule.

Fed. R. Bankr. P. 7026. Where the debtor is not a resident of the State, the State would often be required to pay travel expenses and hire out-of-state counsel in addition to normal litigation costs. Requiring a State to proactively litigate every tax debt that might be subject to a discharge would require a disproportionate commitment of resources in relation to the potential recoveries. Again, States would likely write off a significant number of non-discharged tax debts simply because the amount involved in individual cases would not warrant the additional cost of litigation.[13] And such forced pre-determination litigation similarly would interfere with state environmental cost-recovery and enforcement actions.

Petitioner's advance-determination proposal is, moreover, contrary to Congress's decision to make 16 of the 19 discharge exceptions self-effectuating.[14] Only three discharge exceptions require an advance determination by the bankruptcy court to be effective. *See* 11 U.S.C. § 523(a)(1)-(19) (listing the exceptions); *id.* § 523(c) (requiring that three exceptions—§ 523(a)(2), (4), (6)—be asserted within a limited time after the case is filed or they are forfeited); *see also*

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[13] While petitioner objects that "innocent debtors" emerging from bankruptcy should not have to "absorb the costs of creditor mistakes" (Pet. Br. 3), the Code contemplates that debtors will often have obligations that are not extinguished. The substantial costs to States that would result from petitioner's overbroad rule would fall to state taxpayers—a result that is neither just nor consistent with the Code.

[14] Congress has repeatedly added new exceptions to discharge, the first in 1984, with 10 more added since 1990. Robert E. Ginsberg et al., *Ginsberg & Martin on Bankruptcy* § 11.06[A] (5th ed. 2018).

Fed. R. Bankr. P. 4007.[15] While a creditor may elect to seek a discharge determination in bankruptcy court on self-effectuating exceptions, 11 U.S.C. § 523(d), nothing in the Code or the Rules requires that it do so. Indeed, as discussed below, other courts have concurrent jurisdiction to resolve discharge disputes as they arise—for example, in state-court enforcement actions. *See* 28 U.S.C. § 1334(b); *see also* p. 18, *infra*.

None of these adverse results serves the letter or spirit of the Code.

## III. A Standard of Objective Reasonableness Accounts for the Interests of Both Debtors and Creditors, Consistent with the Code

The States agree with respondents and the United States that traditional standards for judging civil contempt should apply to asserted violations of a bankruptcy discharge. Specifically, where a creditor's view that an obligation is not covered by a discharge is "objectively reasonable," the creditor should not be held in contempt or subject to sanction where a court ultimately comes to a different conclusion. *See* Resp. Br. 34-36; U.S. Amicus Br. 20 ("[W]here there is an objectively reasonable dispute about whether a particular debt is discharged, . . . a creditor's attempt to collect *that debt* cannot subject it to civil contempt."); *see also id.* at 11, 23. The States offer the following additional arguments in support of that result.

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[15] Even for these three exemptions, the advance-determination requirement is forfeited if the debtor fails to properly notify the creditor. *See* § 523(a)(3)(B).

1. The text and structure of the Bankruptcy Code support the use of an objective reasonableness standard. *See* generally Resp. Br. 16-18; U.S. Amicus Br. 23, 26. As noted above, such a standard properly accounts for Congress's decision to include 16 self-effectuating exceptions to the discharge injunction, and to require an advance determination by the bankruptcy court for only three exceptions. *See* pp. 5, 16, above.

A reasonableness standard also respects the statutory right of creditors to seek from a nonbankruptcy court a determination resolving whether a debt has been discharged—generally in the context of a state-court collection or enforcement action. Under 28 U.S.C. § 1334(b), district courts have "original *but not exclusive* jurisdiction of all civil proceedings arising under title 11," including discharge determinations. (emphasis added). State courts therefore have concurrent jurisdiction to determine whether there is or was a debt or other legal obligation and, if so, whether it has been discharged. As the advisory committee notes, "[t]he issue whether a claim was excepted from discharge may be determined either in the court that entered the discharge or—in most instances—in another court with jurisdiction over the creditor's claim." Fed. R. Civ. P. 8 advisory committee's note (2010 Amendment); *see also* Fed. R. Bankr. P. 4007 original advisory committee notes (jurisdiction over dischargeability of debts "is held concurrently by the bankruptcy court and any appropriate nonbankruptcy forum"); U.S. Amicus Br. 27. If a creditor proceeding in state court obtains a ruling that its claim or action is excepted from discharge, the creditor's subsequent actions to collect payment or enforce regulatory laws should be considered objectively reasonable as a matter of law.

In addition, a standard that would preclude sanctions where the creditor's actions are objectively reasonable is consistent with the Code's approach to fee awards. In only one instance does Congress allow debtors to seek compensation for responding to a creditor's requests for a discharge determination. Under Section 523(d), if a creditor "requests a determination of dischargeability" on a fraud-based complaint (that is, a complaint under the exception set out in Section 523(a)(2)), but the debtor prevails, the bankruptcy court shall award the debtor its costs and attorneys' fees only where the creditor's position was not "substantially justified"—in other words, where it was unreasonable.[16]

2. A standard of objective reasonableness also accounts for the difference between a summary discharge injunction, on the one hand, and a court order that specifies in detail the scope and nature of the conduct being enjoined. *See* generally U.S. Amicus Br. 18. As noted above (p. 4), the form discharge order is only two pages long, and operates by reference to the Bankruptcy Code. While Section 524 enjoins any attempt to collect on a "discharged" debt, it defines the scope of that injunction solely by cross-reference to the lengthy list of exceptions set out in Section 523. Determining whether one of those exceptions applies to a given claim or obligation can be a complex endeavor, as the applicable law is "complicated." JA 62; JA 60-62 (outlining numerous exceptions to the bankruptcy court's statutory injunction); *see also* pp. 4-12, *supra*.

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[16] The section further provides that the court "shall not award such costs and fees if special circumstances would make the award unjust." *Id.* Congress did not extend the fee provision to the two other discharge exceptions that must be resolved in the bankruptcy court, or to any of the 16 self-effectuating exceptions.

In general, one may not be held in contempt of an injunction that is overly broad, or merely requires compliance with the law. *See generally NLRB v. Express Pub. Co.*, 312 U.S. 426, 435-436 (1941); *see also Swift v. United States*, 196 U.S. 375, 396 (1905) (Holmes, J.) ("We cannot issue a general injunction against all possible breaches of the law."). Bankruptcy discharges are of course not so broad as to be unenforceable, but their complicated, technical nature must affect how courts gauge contempt.

Cases addressing contempt in other areas involving technical orders and complicated law and facts may provide guidance. In such cases, courts regularly hold that a party's actions reflecting an objectively "reasonable interpretation" of the court's statutory discharge injunction do not result in contempt. *See, e.g., California Artificial Stone Paving Co. v. Molitor*, 113 U.S. 609, 618 (1885) ("contempt is a severe remedy, and should not be resorted to where there is fair ground of doubt as to the wrongfulness of the defendant's conduct"); *Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982) (defendant not in contempt of consent judgment entered in trademark infringement suit where plaintiff failed to establish that defendant's interpretation was unreasonable); *Latino Officers Ass'n City of New York, Inc. v. City of New York*, 558 F.3d 159, 164 (2nd Cir. 2009) (applying "fair ground of doubt" standard to violation of order incorporating settlement agreement in employment discrimination case); *see* U.S. Amicus Br. 10. While a court might clarify its prior order and direct a party subject to the order to change its conduct in the future, it normally will not impose sanctions for past conduct that was taken reasonably and in good faith.

Further, amici States agree with respondents and the United States that, while a creditor's purely subjective good faith belief that a debt has not been discharged should not, standing alone, insulate it from contempt, the circumstances that give rise to the creditor's belief are relevant to whether it is objectively reasonable. Resp. Br. 23-27; U.S. Amicus Br. 11. Many cases discussing whether a party facing contempt acted in "good faith" may be interpreted as courts exploring the reasonableness of the defending party's actions. *See, e.g., Maness v. Meyers*, 419 U.S. 449, 465-466 (1975) (reversing contempt sanctions where alleged contemnor exercised "good faith" in refusing to produce court-ordered materials because they might tend to incriminate a witness in other proceedings); *In re Watts*, 190 U.S. 1, 29 (1903) (reversing contempt citation where contemnor acted in "good faith"); *Vertex*, 689 F.2d at 889; *First State Bank of Roscoe v. Stabler*, 914 F.3d 1129, 1140 (8th Cir. 2019) ("Sanctions generally should be unavailable where a creditor acts without knowledge of the injunction *or in good faith reliance on the belief that their actions are permissible.*" (emphasis added)). In other words, where a creditor makes a good faith effort to understand the relevant facts and law, the creditor's conclusion about whether an obligation is discharged is very likely to be objectively reasonable.

3. Finally, a standard protecting a creditor acting on an objectively reasonable basis does not offend the "fresh start" purpose of the Code. Debtors' interests remain amply protected.

If a debtor believes that a creditor is acting, or even threatening to act, in a way that violates a discharge injunction, the debtor may immediately invoke the bankruptcy court's authority to bar the creditor from

proceeding further, and may do so without payment of a filing fee. Fed. R. Bankr. P. 4007(a), (b). If the creditor has acted in bad faith, Rule 9011 allows the court to impose sanctions.

In short, the standard of objective reasonableness requires creditors to take appropriate steps to understand the relevant law and facts. That requirement protects debtors from creditor overreaching. At the same time, a reasonableness standard respects the legal limits of the discharge, allowing creditors to continue to collect debts that the discharge is not intended to cover. The standard thus gives full effect to both sides of the balance of interests struck by Congress in the Bankruptcy Code.

## CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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